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Illinois Criminal Law Digest

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ACCOUNTABILITY

§1-1

People v. Jones, 2016 IL App (1st) 141008 (No. 1-14-1008, 10/11/16)

When the police attempted to execute a search warrant, defendant told his co-defendant to shoot the officers. Defendant wanted to argue that he acted in self-defense because he believed the police were intruders. The trial court refused to allow defendant to argue self-defense because defendant was being tried under an accountability theory and thus could not claim that his actions in telling co-defendant to shoot were taken in self-defense. Instead, the trial court held that defendant had to prove that co-defendant was acting in self-defense.

The Appellate Court disagreed. The court held that there was no reason an accomplice should not be able to assert self-defense. An accomplice who promotes a crime by another believing that self-defense is necessary is no more culpable than a principal who believes self-defense is necessary. If the law places all the liability of the acts of the principal on the accountable defendant, the law should also afford the accountable defendant all the same protections.

On retrial (the court reversed defendant's convictions on other grounds), defendant should be allowed to argue that he acted in self-defense when he told his co-defendant to shoot.

(Defendant was represented by Assistant Defender Chris Bendik, Chicago.)

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BURGLARY

§8-1(a)

People v. Harris, 2016 IL App (1st) 141746 (No. 1-14-1746, 10/26/16)

1. The offense of burglary is defined as knowingly entering or without authority remaining "within a building, housetrailer, watercraft, aircraft, motor vehicle . . ., railroad car, or any part thereof, with intent to commit therein a felony or theft." 720 ILCS 5/19-1(a). The purpose of the burglary statute is to protect the security and integrity of certain enclosures.

In the context of the burglary statute, a "building" is a structure or edifice designed for habitation or for the shelter of property. Structures that have been found to constitute a "building" under the burglary statute include a partially built tool shed consisting of a roof and one wall, a tent, an open-ended car wash, and a telephone booth.

Furthermore, trailers used to store property have been held to qualify as buildings under the burglary statute.

2. A 36-foot enclosed two-car racing trailer was used to store and transport property which the owner used at racetracks. The trailer was locked and parked on a lot that was near the owner's shop. The trailer had been parked on the lot for a few days, and was not connected to a vehicle.

The trailer was broken into and several items removed. Defendant and his co-defendant were arrested as they tried to sell some of the property at a body shop.

Noting that the trailer was immobile at the time of the entry, was large enough to allow a person to walk in, and contained cabinets, storage areas, and working electric outlets and light switches on the walls, the court found that the trailer was a structure designed and used to store property. Therefore, it constituted a "building" within the meaning of the burglary statute.

Defendant's conviction for burglary was affirmed.

(Defendant was represented by Assistant Defender Kristen Mueller, Chicago.)

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§8-1(a)

People v. McCann, 2016 IL App (1st) 142136 (No. 1-14-2136, 10/26/16)

1. The offense of burglary is defined as knowingly entering or without authority remaining "within a building, housetrailer, watercraft, aircraft, motor vehicle . . ., railroad car, or any part thereof, with intent to commit therein a felony or theft." 720 ILCS 5/19-1(a). The purpose of the burglary statute is to protect the security and integrity of certain enclosures.

In the context of the burglary statute, a "building" is a structure or edifice designed for habitation or for the shelter of property. Structures that have been found to constitute a "building" under the burglary statute include a partially built tool shed consisting of a roof and one wall, a tent, an open-ended car wash, and a telephone booth. Furthermore, trailers used to store property have been held to qualify as buildings under the burglary statute.

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The trailer was broken into and several items removed. Defendant and his co-defendant were arrested as they tried to sell some of the property at a body shop.

Noting that the trailer was immobile at the time of the entry, was large enough to allow a person to walk in, and contained cabinets, storage areas, and working electric outlets and light switches on the walls, the court found that the trailer was a structure designed and used to store property. Therefore, it constituted a "building" within the meaning of the burglary statute.

Defendant's conviction for burglary was affirmed.

(Defendant was represented by Assistant Defender Stephen Gentry, Chicago.)

HOME INVASION

CH. 25

People v. Dorsey, 2016 IL App (4th) 140734 (No. 4-14-0734, 10/31/16)

The injury requirement of the home invasion statute (720 ILCS 5/19-6) is satisfied by evidence that the defendant inflicted physical or psychological harm, and there is no requirement that the psychological harm be tied to some kind of physical contact between defendant and the victim.

(Defendant was represented by Assistant Defender Akshay Matthew, Springfield.)

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HOMICIDE

§26-3

People v. Taylor, 2016 IL App (1st) 141251 (No. 1-14-1251, 10/18/16)

Attempt murder is generally subject to a Class X sentence. However, 720 ILCS 5/8-4(c)(1)(E) provides that if a person convicted of attempt murder:

> proves by a preponderance of the evidence . . . that, at the time of the attempted murder, he or she was acting under a sudden and intense passion resulting from serious provocation by the individual whom the defendant endeavored to kill, or another, and, had the individual the defendant endeavored to kill died, the defendant would have negligently

> or accidentally caused that death, then the sentence for the attempted murder is the sentence for a Class 1 felony.

The Appellate Court concluded that §5/8-4(c)(1)(E) is intended to apply where the defendant attempts to kill a person who has provoked him but negligently or accidentally kills a third person (i.e., "transferred intent"). The court rejected the trial court's finding that the statute applies only where the defendant unsuccessfully attempts to kill his provoker, but had he succeeded the killing would have been negligent or accidental. The Appellate Court noted that under the trial judge's interpretation it would be impossible for a defendant convicted of attempt murder to obtain a reduction classification based upon provocation, because specific intent to kill is required for attempt murder but is fundamentally incompatible with the requirement that had the provoker died the death would have been negligent or accidental.

2. In addition, the trial court abused its discretion by finding that defendant was not acting under a sudden and intense passion sufficient to entitle him to a reduction in classification. Defendant fired a weapon at the driver of a car which struck a vehicle in which defendant's child was a passenger. The trial court found that defendant did not act in a sudden and intense passion because the car at which defendant fired had come to a stop at the time of the shooting.

The Appellate Court concluded that because the events took place in quick succession, there was little time for defendant's anger to subside. Under these circumstances, defendant was acting under a sudden and intense passion.

3. To obtain a sentence classification reduction under §8-4(c)(1)(E), defendant was also required to show that his passion was the result of serious provocation by the person whom he shot. The trial court did not reach this issue because it concluded the defendant was not acting under a sudden and intense passion. The cause was remanded to allow the lower court to make this determination.

(Defendant was represented by Assistant Defender Michael Gentithes, Chicago.)

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INDICTMENTS, INFORMATIONS, COMPLAINTS

§§29-4(b), 29-5

People v. Swift, 2016 IL App (3d) 140604 (No. 3-14-0604, 10/19/16)

The State charged defendant with aggravated driving under the influence. 625 ILCS 5/11-501(a)(6), (d)(1)(C). One of the elements of aggravated DUI is that defendant's driving was a proximate cause of the victim's injuries. The indictment failed to include this element. After the first witness testified at trial, defendant moved to dismiss the

indictment on the grounds that it was defective for failing to include an essential element of the charged offense. The trial court denied defendant's motion and directed the State to amend the indictment to include the missing element.

The Appellate Court held that the indictment contained a substantive defect by failing to include an essential element of the offense. But it affirmed defendant's conviction because he was unable to show that he was prejudiced by this defect. When an indictment is challenged prior to trial, it will be dismissed if it contains a substantive defect and there is no need for a defendant to show any prejudice. As a general rule, however, if an indictment is challenged during trial, defendant must show that he was prejudiced. Here defendant did not challenge the indictment until after trial began and he could show no prejudice since he was clearly aware of the proximate cause element during trial.

(Defendant was represented by Assistant Defender Ann Fick, Elgin.)

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JURY

§§32-4(c)(2), 32-4(c)(3)

In re A.S., 2016 IL App (1st) 161259 (No. 1-16-1259, 10/7/16)

Batson established a three-step process for addressing claims of racial discrimination in jury selection. First, a defendant must make a *prima facie* showing that the State used its peremptory challenges on the basis of race. Second, the burden shifts to the State to articulate race-neutral reasons for excluding each dismissed juror; the defendant then may argue that the reasons are pretextual. Third, the trial court must undertake "a sincere and reasoned attempt to evaluate the prosecutor's explanations" and make the ultimate determination of whether defendant has made a case of purposeful discrimination.

The Appellate Court held that the trial court properly found that defendant made a *prima facie* case that the State used its peremptory challenges on the basis of race. The record showed that the State used 80% of its peremptory challenges against African-Americans, only 8.3% of the jury was African-American, and three members of the venire challenged by the State were a heterogenous group, sharing race as their only common characteristic.

But once the State came forward with reasons for its challenges, the trial court failed to conduct a proper third-stage evaluation of those reasons. The State provided race-neutral explanations for all but one of its challenges. As defendant pointed out below, however, in three of those instances the State also accepted white jurors with similar though not identical characteristics. The trial court nonetheless accepted the

State's explanations without any scrutiny and thus failed to conduct a meaningful third-stage evaluation of the State's reasons. The trial court also failed to require the State to provide a race-neutral explanation for one of its peremptory challenges. And finally, the trial court improperly relied on the dissent in **Batson** as support for its decision.

The Appellate Court remanded the case for further **Batson** proceedings.

(Defendant was represented by Assistant Defender Rebecca Cohen, Chicago.)

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JUVENILE PROCEEDINGS

§33-6(d)

People v. Ortiz, 2016 IL App (1st) 133294 (No. 1-13-3294, 10/17/16)

1. Defendant, age 15 at the time of the offense, was tried as an adult under the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130) and was convicted of first degree murder and sentenced to 60 years imprisonment.

2. The court held that defendant's sentence violated the Eighth Amendment. A juvenile's mandatory or discretionary sentence of life imprisonment is constitutionally valid only where the sentencing judge takes into consideration his youth and attendant characteristics to determine whether the defendant is the rarest of juvenile offenders whose crimes reflect permanent incorrigibility.

The court held that since defendant must serve 100% of his 60-year sentence and hence will not be eligible for release until he is 75 years old, his sentence is effectively a life sentence. Although the trial court considered defendant's young age and his personal history in sentencing defendant, it did not consider the corresponding characteristics of his youth as required by **Miller v. Alabama**, 567 U.S. ___ (2012).

3. The court also held that the recent amendments to the automatic transfer provisions applied retroactively to defendant's case. These amendments took effect while defendant's case was on appeal and raised the minimum age for mandatory transfer to criminal court from 15 to 16 years. The court found that where, as here, the legislature does not provide an explicit provision establishing the effective date of the amendments, the general savings clause of section 4 of the Statutes on Statutes (5 ILCS 70/4) applies, and states that amendments that are procedural in nature may be applied retroactively. The amendments to the automatic transfer statute are procedural in nature and thus may apply retroactively to defendant's case.

The court vacated defendant's sentence and remanded the cause for the State to have the opportunity to file a petition for a discretionary transfer to adult court. If

a hearing is held and the trial court determines that defendant's case should be transferred to adult court, then the court must hold a new sentencing hearing.

(Defendant was represented by Assistant Defender Elena Penick, Elgin.)

NARCOTICS (CONTROLLED SUBSTANCES; CANNABIS)

§35-1

People v. Laws, 2016 IL App (4th) 140995 (No. 4-14-0995, 10/25/16)

Section 120(a) of the Methamphetamine Control and Community Protection Act makes it illegal for a defendant who has been found guilty of methamphetamine possession to knowingly thereafter possess without a prescription any substance containing a methamphetamine precursor. 720 ILCS 646/120(a)

The evidence showed that defendant, who had a previous conviction for possession of methamphetamine, purchased Sudafed without a prescription. Sudafed contains pseudoephedrine, a methamphetamine precursor. Defendant argued that the State failed to prove him guilty beyond a reasonable doubt because it failed to show that he knew Sudafed contained a methamphetamine precursor.

The court rejected his argument. It held that knowledge as a criminal *mens rea* applies only to the possessory element not to the illegal nature of the contraband. Since the ingredients of Sudafed are listed on the package, the failure to know that pseudoephedrine is a methamphetamine precursor is simply a mistake of law and is not a defense.

The court affirmed defendant's conviction.

(Defendant was represented by Assistant Defender Akshay Matthew, Springfield.)

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PROSECUTOR

§41-2

People v. Jones, 2016 IL App (1st) 141008 (No. 1-14-1008, 10/11/16)

While the State has wide latitude in opening statements and is entitled to comment on the evidence, it is improper to use derogatory and pejorative terms to describe the defendant which only arouse the prejudice and passions of the jury. Improper

comments require reversal only if they engender substantial prejudice and it is impossible to say whether or not a guilty verdict resulted from them.

Here the State characterized defendant as a criminal four times in opening statements. The State continued to call defendant a criminal even after defendant objected and the court told the jury to disregard the State's comments.

The Appellate Court held that the State's comments were improper. The State characterized defendant as a criminal facing off against police officers. These comments "conjured a powerful image calculated to invoke an emotional response," and had no place in any opening statements. Additionally, the comments had no basis in fact since defendant had never been convicted of a crime. The State's only purpose was to inflame the passions of the jury.

The court found these statements to be reversible error. The State's evidence was not overwhelming and thus the court could not say that the comments did not contribute to defendant's conviction. Defendant's conviction was reversed and remanded for a new trial.

(Defendant was represented by Assistant Defender Chris Bendik, Chicago.)

ROBBERY

§43-4

People v. Jackson, 2016 IL App (1st) 133823 (No. 1-13-3823, 10/27/16)

A person commits vehicular highjacking by taking a motor vehicle from the "person or the immediate presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-3(a) The Criminal Code defines "another" as "a person or persons . . . other than the offender." 720 ILCS 5/2-3. Thus, "another" can mean more than one person.

Noting a conflict in appellate authority, the court concluded that under the plain meaning of the vehicular hijacking statute only one count of vehicular highjacking can stand where the defendant takes a single vehicle from the immediate presence of several persons.

(Defendant was represented by Assistant Defender Ginger Odom, Chicago.)

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SEARCH & SEIZURE

§44-11(a)

People v. Wall, 2016 IL App (5th) 140596 (No. 5-14-0596, 10/12/16)

Voluntary consent to search is an exception to the warrant requirement, but to be effective the consent must be given without any coercion, express or implied. A defendant's initial refusal to consent is an important factor in determining whether later consent is voluntary. The fact that defendant signed a written consent form is not dispositive in deciding whether consent was voluntary where circumstances show the consent was obtained through coercion. A police officer's false or misleading information may make defendant's consent involuntary.

The police, acting on a tip from a confidential informant that defendant was growing marijuana in his house, went to defendant's house without a warrant. Defendant wasn't home so an officer called him and falsely told him there had been a break-in at his house. When defendant arrived, the officer revealed that there was no break-in and instead asked defendant for permission to enter and search his house.

Defendant asked the officer if he had a warrant. The officer told defendant that if he did not sign a consent to search form he would go to jail. Conversely, if defendant did sign the form he would not go to jail that day. Defendant signed the consent form and the police searched his house and recovered contraband.

The court held that the police "tricked, intimidated, and threatened defendant into signing a voluntary consent form." Under these circumstances, defendant's consent was involuntary. The court reversed defendant's conviction, suppressed all evidence obtained from the illegal search, and remanded for a new trial.

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SENTENCING

§§45-1(a), 45-1(b)(2)

People v. Ortiz, 2016 IL App (1st) 133294 (No. 1-13-3294, 10/17/16)

Defendant, age 15 at the time of the offense, was convicted of first degree murder and sentenced to 60 years imprisonment.

The court held that defendant's sentence violated the Eighth Amendment. A juvenile's mandatory or discretionary sentence of life imprisonment is constitutionally valid only where the sentencing judge takes into consideration his youth and attendant characteristics to determine whether the defendant is the rarest of juvenile offenders whose crimes reflect permanent incorrigibility.

The court held that since defendant must serve 100% of his 60-year sentence and hence will not be eligible for release until he is 75 years old, his sentence is effectively a life sentence. Although the trial court considered defendant's young age and his personal history in sentencing defendant, it did not consider the corresponding characteristics of his youth as required by **Miller v. Alabama**, 567 U.S. ___ (2012).

The court vacated defendant's sentence and remanded the cause for a new sentencing hearing.

(Defendant was represented by Assistant Defender Elena Penick, Elgin.)

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§45-1(a)

People v. Taylor, 2016 IL App (1st) 141251 (No. 1-14-1251, 10/18/16)

Attempt murder is generally subject to a Class X sentence. However, 720 ILCS 5/8-4(c)(1)(E) provides that if a person convicted of attempt murder:

> proves by a preponderance of the evidence . . . that, at the time of the attempted murder, he or she was acting under a sudden and intense passion resulting from serious provocation by the individual whom the defendant endeavored to kill, or another, and, had the individual the defendant endeavored to kill died, the defendant would have negligently or accidentally caused that death, then the sentence for the attempted murder is the sentence for a Class 1 felony.

The Appellate Court concluded that §5/8-4(c)(1)(E) is intended to apply where the defendant attempts to kill a person who has provoked him but negligently or accidentally kills a third person (i.e., "transferred intent"). The court rejected the trial court's finding that the statute applies only where the defendant unsuccessfully attempts to kill his provoker, but had he succeeded the killing would have been negligent or accidental. The Appellate Court noted that under the trial judge's interpretation it would be impossible for a defendant convicted of attempt murder to obtain a reduction classification based upon provocation, because specific intent to kill is required for attempt murder but is fundamentally incompatible with the requirement that had the provoker died the death would have been negligent or accidental.

2. In addition, the trial court abused its discretion by finding that defendant was not acting under a sudden and intense passion sufficient to entitle him to a reduction in classification. Defendant fired a weapon at the driver of a car which struck a vehicle in which defendant's child was a passenger. The trial court found that defendant did

not act in a sudden and intense passion because the car at which defendant fired had come to a stop at the time of the shooting.

The Appellate Court concluded that because the events took place in quick succession, there was little time for defendant's anger to subside. Under these circumstances, defendant was acting under a sudden and intense passion.

3. To obtain a sentence classification reduction under §8-4(c)(1)(E), defendant was also required to show that his passion was the result of serious provocation by the person whom he shot. The trial court did not reach this issue because it concluded the defendant was not acting under a sudden and intense passion. The cause was remanded to allow the lower court to make this determination.

(Defendant was represented by Assistant Defender Michael Gentithes, Chicago.)

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§45-1(b)(3)

People v. Jones, 2016 IL 119391 (No. 119391, 10/20/16)

Under 730 ILCS 5/5-5-3.2(b)(7), an adult offender's prior juvenile delinquency adjudication may be considered as a factor in deciding whether to impose an extended-term sentence on the adult conviction if: (1) the prior adjudication involved an act which, if committed by an adult, would be a Class X or Class 1 felony, and (2) the instant conviction occurred within 10 years of the juvenile adjudication. In **Apprendi v. New Jersey**, 530 U.S. 466 (2000), the United States Supreme Court held that other than a prior conviction, any fact which increases the penalty for a crime beyond the statutory maximum must be submitted to the trier of fact and proven beyond a reasonable doubt. In response to **Apprendi**, the Illinois legislature passed 725 ILCS 5/111-3(c-5), which provides that if an alleged fact other than a prior conviction is not an element of the offense but is to be used to increase the range of penalties beyond the statutory maximum, the alleged fact must be included in the charging instrument or otherwise provided to the defendant through a written notification before trial, submitted to the trier of fact as an aggravating factor, and proven beyond a reasonable doubt.

Defendant was convicted as an adult of aggravated robbery and sentenced to an extended term of 24 years based on a prior juvenile adjudication for residential burglary. Noting a conflict in national authority, the court held that as a matter of first impression in Illinois, a prior juvenile adjudication which qualifies an adult defendant for an extended term sentence falls within both **Apprendi's** prior conviction exception and the same exception in §111-3(c-5). The court concluded that proceedings which result in a juvenile adjudication contain the same constitutional procedural safeguards as proceedings which result in a prior conviction except, in most cases, the right to a jury trial. Because there is no constitutional right to a jury trial in juvenile proceedings,

however, (**McKeiver v. Pennsylvania**, 403 U.S. 528 (1971) (plurality opinion)), both juvenile adjudications and prior convictions result from proceedings in which the minor or defendant received constitutionally sufficient procedural safeguards. Thus, a juvenile adjudication is a no less valid or reliable means of judging recidivism than is a prior conviction.

Because a juvenile adjudication is not subject to **Apprendi** or §111-3(c-5), the trial court did not err by relying on the pre-sentence report in deciding to impose an extended term.

2. Furthermore, the pre-sentence report was sufficiently reliable to establish that defendant had a delinquency adjudication for residential burglary. A pre-sentence report is compiled pursuant to statutory guidelines which require the inclusion of certain information, including any history of delinquency. In addition, at the sentencing hearing defendant challenged some aspects of the pre-sentence report by asserting that he was a father, but did not dispute the accuracy of the representation that he had a prior delinquency adjudication. Under these circumstances, the pre-sentence report was sufficiently reliable to justify imposition of the extended term.

3. In a dissenting opinion, Justices Burke, Garman, and Kilbride found that under Illinois statutory law, a juvenile adjudication delinquency is not equivalent to an adult conviction and therefore does not qualify for the statutory exception in §111-3(c-5).

(Defendant was represented by Assistant Defender Josette Skelnik, Elgin.)

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§§45-7(b), 45-13

People v. Walker, 2016 IL App (3d) 140766 (No. 3-14-0766, 10/28/16)

The imposition of fines is a judicial act. The clerk of the court is a nonjudicial member of the court and has no authority to impose fines. A fine imposed by a clerk is void from its inception.

At sentencing, the trial court ordered defendant to "pay court costs in this matter." The clerk entered a written cost sheet which included several fines.

The Appellate Court held that the fines were imposed without authority by the clerk and were thus void and must be vacated. The State agreed but argued that the cause should be remanded to the trial court to properly impose any mandatory fines. The court disagreed, holding that after **Castleberry** the Appellate Court may no longer increase a sentence which is illegally low. Since a fine is part of the criminal sentence, the court had no authority to remand the case for the imposition of mandatory fines since it would impermissibly increase defendant's sentence.

The dissenting justice would have held that the fines were not void since the circuit court had jurisdictional authority to delegate the task of calculating the amount of costs to the circuit clerk. Accordingly, defendant waived the issue by not objecting in the trial court.

(Defendant was represented by Assistant Defender Katherine Strohl, Ottawa.)

§45-10(a)

People v. Jackson, 2016 IL App (1st) 133823 (No. 1-13-3823, 10/27/16)

The court found that the sentences for aggravated vehicular highjacking and attempted armed robbery must be vacated because they included firearm enhancements that had been declared unconstitutional at the time of the offenses. Although the General Assembly enacted curative legislation, that legislation did not take effect until several months after the offense. Thus, at the time of the offense the sentencing enhancement had been held unconstitutional.

(Defendant was represented by Assistant Defender Ginger Odom, Chicago.)

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SEX OFFENSES

§46-7

People v. Minnis, 2016 IL 119563 (No. 119563, 10/20/16)

The First Amendment right to freedom of speech includes the right to remain anonymous while publishing and distributing written material. This right fully extends to Internet communications. Laws unrelated to the content of speech are subject to an intermediate level of scrutiny. To survive intermediate scrutiny the regulation must serve a substantial governmental interest unrelated to the suppression of speech and must be narrowly tailored so it does not burden more speech than necessary to further that interest.

The Sex Offender Registration Act requires sex offenders to disclose information regarding their Internet identities and websites. 730 ILCS 150/3(a). This information is subject to public inspection under the Sex Offender Community Notification Law. 730 ILCS 152/101.

The court subjected the statute to intermediate scrutiny since it does not regulate the content of speech and found that it did not violate the First Amendment. The internet

disclosure provision serves the substantial government interest of protecting the public from recidivist sex offenders. And the statute is narrowly tailored since a more narrowly drawn statute would not as effectively promote this governmental interest.

(Defendant was represented by Assistant Defender Daaron Kimmel, Springfield.)

STATUTES

§48-2

People v. Ortiz, 2016 IL App (1st) 133294 (No. 1-13-3294, 10/17/16)

Defendant, age 15 at the time of the offense, was tried as an adult under the automatic transfer provision of the Juvenile Court Act. (705 ILCS 405/5-130)

The court held that the recent amendments to the automatic transfer provisions applied retroactively to defendant's case. These amendments took effect while defendant's case was on appeal and raised the minimum age for mandatory transfer to criminal court from 15 to 16 years. The court found that where, as here, the legislature does not provide an explicit provision establishing the effective date of the amendments, the general savings clause of section 4 of the Statutes on Statutes (5 ILCS 70/4) applies, and states that amendments that are procedural in nature may be applied retroactively. The amendments to the automatic transfer statute are procedural in nature and thus may apply retroactively to defendant's case.

The court vacated defendant's sentence and remanded the cause for the State to have the opportunity to file a petition for a discretionary transfer to adult court.

(Defendant was represented by Assistant Defender Elena Penick, Elgin.)

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